

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA,) DOCKET NO. 3:15-cr-34
)
vs.)
)
JESMENE LOCKHART,)
)
Defendant.)
)

EXCERPT OF PROCEEDINGS
TRANSCRIPT OF CLOSING ARGUMENTS
BEFORE THE HONORABLE ROBERT J. CONRAD, JR
UNITED STATES DISTRICT COURT JUDGE
JUNE 15, 2020

APPEARANCES:

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Charlotte, North Carolina

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P R O C E E D I N G S

MONDAY, JUNE 15, 2020 at 3:18 p.m.:

(Prior proceedings were not requested at this time.)

THE COURT: Members of the jury, you have now heard the general instructions of the Court. It is now time for the attorneys to make their closing. Is the government ready to do that?

MS. SPAUGH: Yes, Your Honor. Thank you.

The defendant wasn't convicted of just one or two felonies. He was convicted of ten; ten felonies. Because of that he's not allowed to have a gun, and he wasn't allowed to have one on September 27, 2014.

In a few minutes Judge Conrad is going to instruct you on the law, and it will be your job to decide what the facts are from the evidence and then apply the law as the Judge gives it to you.

So why do you have to follow the law that the Judge gives you? So that everyone charged with the same crime has the same law applied and everyone gets a fair trial, which is exactly why we are here today; because the defendant has a constitutional right to a trial.

So I first want to talk to you about what happens, and then we'll go through how the evidence fits in with the law.

So we have to start by looking at September 7, 2006.

1 Back then the defendant pleaded guilty to six counts of
2 robbery with a dangerous weapon, and four counts of conspiracy
3 to commit robbery with a dangerous weapon. He was sentenced
4 to 38 to 55 months in one judgment, to be followed by another
5 38 to 55 months in a second judgment. These are all
6 Mecklenburg County Superior Court state convictions. He
7 actually went to prison from 2006 to 2011. Then just a few
8 years later we get to September 27, 2014.

9 Officer Bodenstein and Collins get a 911 call about
10 a suspicious vehicle. Around 10:30 that night they respond,
11 find the defendant sitting in a car with a female. He was in
12 the driver's seat. When he goes to hand his ID to the
13 officer, he's reaching down by the floor with his left hand.
14 So the officer looks down and tries to see what's going on,
15 and he sees a magazine sticking out of this gun, he said about
16 8 to 10 inches. He gets the defendant out. He goes back to
17 the floorboard and picks up this gun. It's got a 30-round
18 magazine, one in the chamber ready to go. He then keeps
19 searching the area and he finds another ten-round magazine in
20 the driver's side door pocket.

21 When he puts the defendant in his car, he apologizes
22 and says that he was just trying to move it under the seat to
23 hide it.

24 So based on these facts, this is the charge before
25 you today. Now we'll get to this more in a minute, but the

1 shorthand for it is possession of a firearm by felon.

2 The four elements that the government must prove to
3 you beyond a reasonable doubt are:

4 First, that the defendant had been convicted in any
5 court of a crime punishable by imprisonment for a term
6 exceeding one year. I know that's a long phrase but that's
7 the definition of a felony.

8 Second, that the defendant knew he had been so
9 convicted.

10 Third, that after that conviction he knowingly
11 possessed a firearm.

12 Last, that he possessed -- his possession of this
13 firearm was in or affecting interstate or foreign commerce.

14 Now that last element, element four, we have
15 stipulated to it. I will show you that in a minute. But that
16 means that we all agree. There's no dispute about that. You
17 don't really need to spend any time on that one. Let's go
18 through these one by one.

19 First, that the defendant had been convicted of a
20 crime punishable by more than a year in prison. That's a lot
21 of words, but that is what we mean. When you hear "felony,"
22 that's what we're talking about, a crime punishable by more
23 than a year in prison. So when you hear "felon," it means a
24 person convicted of a crime punishable by more than a year in
25 prison.

1 So how do we know he was? Well, he told you that's
2 him. His signature is messed up. That's his picture on one
3 of the court documents. And here is his first judgment from
4 that state court conviction that we've all been talking about.

5 So you will see two of these. The first one, the
6 case number is in the top right corner ends in 460. It says,
7 "Active Punishment for Felony." The defendant's name and
8 information. Then it tells you what he pled guilty to, two
9 counts of robbery with a dangerous weapon, and three counts of
10 conspiracy to commit armed robbery. It goes on to list the
11 offense dates of March 16th, March 14, 2005. The general
12 statute, felony/misdemeanor, class of felony. And then he was
13 actually sentenced for a minimum term of 38 months
14 imprisonment to a maximum term of 55 months imprisonment in
15 the custody of the North Carolina Department of Corrections.

16 You will see that there are five charges listed
17 there, but this is one judgment. It means that these five
18 charges got consolidated under one case number. So he was
19 convicted of all of those. He pled guilty to all five, but he
20 gets one sentence for those five.

21 Here is the next count. This case ends in 461.
22 Again, the defendant's information says "Active Punishment for
23 Felony." Then we have four more robbery with a dangerous
24 weapon convictions and one more conspiracy to commit armed
25 robbery. Those dates are March 9, 2005, March 14, 2005 and

1 March 16, 2005. And again, the statute, felony/misdemeanor
2 class of felony. Now the judgment for that says, "The Court,
3 having considered evidence, ordered that the defendant be
4 imprisoned for a minimum term of 38 months to a maximum term
5 of 55 months," again, in the Department of Corrections. And
6 that this sentence would begin at the expiration of the other
7 sentence in 460. So that means he got back-to-back sentences,
8 38 to 55 months followed by 38 to 55 months.

9 The second element, that he knew he had been so
10 convicted of a crime punishable by more than a year in prison.
11 That's the question here. This is really the only thing
12 that's in dispute.

13 So this is page 2 of our Exhibit 2. I know I'm kind
14 of hitting the highlights here, but they are all in evidence.
15 So you all, if you want to look through every word or look at
16 them again, you can do that while you are deliberating.

17 So this says that the defendant, on
18 September 23, 2006, was committed to the North Carolina
19 Department of Public Safety for these counts. And then he got
20 out on post-release supervision on October 2, 2011.

21 This has the same charges, it's about three years
22 and two months, and four years and seven months for each
23 different judgment.

24 2011 he gets out of prison. That is the best
25 evidence that he knew he'd been convicted of a crime

1 punishable by more than a year in prison. Because he was
2 actually punished by more than a year in prison. Of course he
3 knew that. He went to prison. He admitted that. He
4 remembers that. But moreover, on top of that, we have his
5 transcript of plea from when he pled guilty to those ten
6 felonies. So let's look at that.

7 It starts off by saying: "The undersigned Judge,
8 having addressed the defendant personally in open court, finds
9 that the defendant was duly sworn or affirmed, entered a plea
10 of guilty, and offered the following answers to the questions
11 set out below.

12 "Are you able to hear and understand me? Yes."

13 So this is clearly something that that Judge read to
14 him out loud as he answered under oath that day.

15 "Have the charges been explained to you by your
16 lawyer, and do you understand the nature of the charges, and
17 do you understand every element of each charge? Yes."

18 "Do you understand you are pleading guilty? Yes."

19 "Do you personally plead guilty? Yes."

20 "Are you in fact guilty? Yes."

21 Let's move on to number 15.

22 "Have you agreed to plead guilty as part of a plea
23 agreement? Yes."

24 Then his plea agreement is detailed here. He's
25 pleading guilty as charged. Type of felony, six robberies

1 with a dangerous weapon; four counts of conspiracy; the cases
2 will be consolidated or grouped into two judgments. He
3 received an active sentence -- which means prison -- of 38 to
4 55 months on each count. The sentences are running
5 consecutively -- that means back to back -- for a total
6 commitment of 76 months to 110 months.

7 So this is something the Judge told him and warned
8 him about all of this when he was pleading guilty.

9 Then it goes on to say the maximum possible
10 punishment for each of those charges. So you will see here on
11 the right, 98 months, 98 months goes on to 229 months. The
12 bottom total maximum. So he's told all this by the judge that
13 day.

14 Then it ends: "Do you enter this plea of your own
15 free will, fully understanding what you are doing? Yes."

16 "Do you agree that there are facts to support your
17 plea? Yes."

18 "Do you have any questions about what has just been
19 said to you or anything else connected to your case? No."

20 Then there is the acknowledgment by him which is
21 signed under oath. "I have read or heard all of these
22 questions and understand them. The answers shown are the ones
23 I gave in open court and they are true and accurate. No one
24 has told me to give false answers in order to have the Court
25 accept my plea in this case. The terms and conditions of the

1 plea as stated within this transcript, if any, are accurate."
2 Then his attorney signs it.

3 So he didn't just roll into court and answer "Yes"
4 to whatever was asked. The Judge went through this with him
5 under oath. This is even more evidence that he knew exactly
6 what he was convicted of and he knew it was punishable by more
7 than a year before he was punished, and then he was actually
8 punished to more than a year in prison.

9 It is beyond belief to think that anyone can be
10 convicted of ten crimes related to armed robbery, go to prison
11 for five years, answer these questions to a Judge, and then
12 three years later not know that they had been convicted of
13 crimes punishable by more than a year in prison.

14 The third element, that the defendant knowingly
15 possessed a firearm. Basically, it means that it was
16 voluntary, intentional.

17 There's two types of possession the Judge will tell
18 you about, actual and constructive. Like the car keys are on
19 your person, that's actual possession. They're in your bag in
20 another room, it's constructive.

21 Here, we know the defendant possessed this firearm
22 because he told you he possessed it. He told you why he
23 possessed it. He told you he was reaching for it to hide it
24 under the seat. So there is really no doubt here that he
25 possessed that firearm, because he knew it was there and he

1 intended to control what happened to it because he wanted to
2 hide it.

3 The last element is that his possession of this
4 firearm was in or affecting interstate or foreign commerce.
5 And you'll see Government's Exhibit 5, which again you can
6 pull up in the back if you want to, but we all agree to this
7 element. There is really no dispute over it. We agreed that
8 that Glock-26 9-millimeter pistol is a firearm, and it meets
9 the definition of that, and that it was shipped or transported
10 in interstate commerce which means, basically, it moved across
11 state lines before the defendant had it on September 27, 2014.

12 So we all heard from the defendant. So you need to
13 ask yourself what to believe if anything about what he said.
14 So when you think about the credibility of witnesses, you use
15 the same tests you do in your talking to everyone in your
16 everyday life, and you can consider why they're testifying the
17 way they did, and the reasons that they would have to do so.
18 You can also consider any inconsistencies with what they said.

19 So I would submit to you that when we look at the
20 defendant's testimony we think about his motive for saying
21 what he said. Of course he doesn't want to be punished for
22 what he did. He doesn't want to be punished for that gun that
23 he had. So I would submit to you that that's a motive to
24 testify the way he did, that he didn't know about these
25 convictions that he had been punished for more than a year in

1 prison for.

2 I would also point out the inconsistencies in this
3 testimony that you heard him repeat. He was a juvenile,
4 juvenile, juvenile, juvenile, juvenile, but he didn't answer
5 half the questions asked. He just kept saying that he was a
6 juvenile. He also said he didn't remember if he told the
7 officer that he was a felon because the officer asked it a
8 different way. He said something about, Oh, he asked me about
9 whether I had been convicted of something punishable by more
10 than a year. But then the officer told you that's not what he
11 said to him. He asked him if he was a felon and that he said
12 "Yes." So that's more evidence that the defendant's testimony
13 can't be believed.

14 I would also point out to you that he remembered
15 everything about his plea transcript that, you know, the basic
16 info. We went over the questions. He remembers that. And
17 then the parts that were bad for him, that shows the Judge
18 warned him about what he was pleading to and the sentences, he
19 doesn't remember that all of a sudden, and he doesn't know
20 what that's about. So it is very convenient the parts he
21 remembers, and very convenient in his testimony that he
22 thought these armed robberies were misdemeanors somehow. The
23 fact that anyone could think armed robbery is a misdemeanor is
24 absurd. Also point out that the question for you is not
25 whether he was quote/unquote a felon. Or that he knew he was

1 a felon. The word felon or felony doesn't matter. All that
2 matters is that he knew he had been convicted of a crime
3 punishable by more than a year in prison. So when you keep
4 hearing felon or felony think about that, the definition, a
5 crime punishable by more than a year in prison.

6 You also heard about his whole background story, you
7 know, about his whole life and that's fine. But I would point
8 out that he said to you that he just came in and pled to ten
9 crimes. His attorney didn't tell them about them, but it
10 looks like a pretty good plea deal. He got two sentences for
11 ten robbery-related crimes. So is that believable that he
12 just rolled in and pled to ten things and didn't know anything
13 else? I submit to you that he reached for that gun because he
14 knew he couldn't have it. He wasn't reaching for it to try
15 and hide it from the officer because it would be better for
16 him. The best thing to do if an officer sees you with a gun
17 or you have a gun near officers, get as far away from it as
18 possible, not to reach for it and try to hide it. That's very
19 risky.

20 These are the four things, again, the government had
21 to prove to you beyond a reasonable doubt. I submit to you
22 that we've proven all these things. The defendant was a
23 convicted felon on this day. He had been convicted of an
24 applicable crime. He knew that. That's why he reached for
25 the gun and he was trying to hide it and we would ask you to

1 find him guilty.

2 THE COURT: Mr. Martinez.

3 MR. MARTINEZ: Thank you.

4 As I indicated to you in opening and Mr. Lockhart's
5 testimony elicited from him, you heard from him, from his
6 mouth. It's not being made up. He testified it's a fact that
7 when he first caught this charge he was 15-years old. He goes
8 to a juvenile court. That's a fact. He goes to a juvenile
9 detention facility. That's a fact. At the age of 17, maybe a
10 year and a half after being in juvenile detention, he's
11 brought to another court. At no time was he advised by a
12 judge that he was being convicted of a felony and pleading
13 guilty to a felony as an adult that would then prohibit him
14 from possessing a firearm; at no time was he advised of that.

15 I'll ask you, look at Government's Exhibit Number 2,
16 that same Plea of Transcript that government counsel just
17 reviewed with you about all these questions that were asked of
18 Mr. Lockhart. And he said, "Yes, yes, yes, yes, yes, yes,
19 yes." He's 17 years of age. Not one question, "Do you
20 understand that by pleading guilty you are going to be
21 convicted of a felony?" Not one question. And as a result be
22 prohibited from possessing a firearm. Not one question. He
23 was never asked. There's no signed document. There's
24 nothing. There's no record at all advising this man who came
25 in and testified under oath, "My lawyer never told me what I

1 was looking at, the consequences of my plea. I was 17 years
2 of age. I had no idea. I'm in a juvenile facility. I was in
3 juvenile court originally. My understanding is as a
4 juvenile."

5 Government counsel makes -- says, Oh, that's absurd
6 that he would believe that an armed robbery would be a
7 misdemeanor.

8 How many 12-year old juveniles every single day in
9 juvenile court in this city plead guilty to some type of
10 violence -- robberies, burglaries, drug offenses -- but
11 they're juveniles -- not one do -- hundreds, maybe even
12 thousands throughout this state.

13 If you're a juvenile -- it is clear, everyone knows,
14 it's common sense -- and you plead guilty in a court that is
15 not adult court, that can't be held against you; everyone
16 knows that. In this case that was his understanding, and the
17 government has to prove beyond a reasonable doubt that he in
18 fact knew he was convicted -- a convicted felon; knew.

19 What -- what evidence -- what did they produce that
20 clearly proves beyond a doubt, beyond any reasonable doubt
21 that this man sitting in front of us right here clearly knew
22 he was a convicted felon? Zero. Nothing.

23 What they want to do is throw up the fact that look
24 at all these convictions he had when he was 17 years of age;
25 common sense, anybody would know that you're a convicted

1 felon. But where's the record? Where's the record? Show
2 me -- show me one document showing that; not one.

3 We're in agreement about the possession of firearm.
4 There's no question Mr. Lockhart had possession of a firearm.
5 There's no question he was cooperative. Was there anything in
6 his actions -- other than trying to reach and move the firearm
7 because he felt he was -- as a black male, having a gun and a
8 police officer come to you is not a good idea -- other than
9 that.

10 Officers -- both officers; very credible,
11 cooperative, apologized to the officer that I moved or
12 attempted to move. I was just trying to move the firearm, not
13 trying to grab it. Apologized. They both said he was
14 cooperative, stopped the vehicle, came out of the vehicle. Is
15 that indicia evidence of guilt?

16 There's clearly a doubt, a reasonable doubt.
17 Because there's absolutely nothing concrete in the record, and
18 Mr. Lockhart testified that he had no knowledge of being a
19 convicted felon in possession of a firearm. Thank you.

20 THE COURT: Rebuttal, please.

21 MS. SPAUGH: Just briefly, Your Honor.

22 THE COURT: You have two minutes.

23 MS. SPAUGH: Thank you.

24 I'm just going again ask you guys to listen to the
25 instructions when His Honor gives them to you. He's going to

1 tell you the law. He's not going to tell you that we had to
2 prove that it was an adult conviction or a juvenile conviction
3 and that the defendant knew it was an adult conviction.
4 That's not an element. He's not going to tell you that the
5 defendant knew it was a quote/unquote called a felony, because
6 that's also not an element.

7 I'm asking you just to use your common sense. No
8 one is saying that he had to know all the laws and know what
9 he did was against the law. That's not the requirement here.
10 We're only saying that those four things I showed you, those
11 four elements are what have to be proven.

12 So I am going to ask you to use your common sense,
13 the best thing you brought here today. You can make
14 inferences from the evidence you've seen when you evaluate it.
15 I'm going to ask you to find him guilty.

16 (That concludes the portion requested at this time.)

17 * * * * *

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF OFFICIAL REPORTER

4 I, Laura Andersen, Federal Official Court Reporter,
5 in and for the United States District Court for the Western
6 District of North Carolina, do hereby certify that pursuant to
7 Section 753, Title 28, United States Code that the foregoing
8 is a true and correct transcript of the stenographically
9 reported proceedings held in the above-entitled matter and
10 that the transcript page format is in conformance with the
11 regulations of the Judicial Conference of the United States.

12 Dated this the 4th day of February 2021.

13 S/Laura Andersen
14 Laura Andersen, RMR
15 Federal Official Court Reporter
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